

FILED 14 MAY 5 10:32 USDC-OR

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

KENNETH W. MEDENBACH

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant.

Civil Case No. 1:14-CV-00745-CL

COMPLAINT

Jury Trial Demanded
Yes

1. PARTIES

Plaintiff

Kenneth W. Medenbach
135887 Main St.
Crescent, OR 97733
541-280-7264

Defendant

United State of America
950 Pennsylvania Ave, NW
Washington DC, 20530
202-514-2000

II. JURISDICTION

- A. Basis for federal jurisdiction is Federal Question
- B. The Constitutional right at issue is 1 Stat. 73. Sec. 8

III. STATEMENT OF CLAIMS

Claim I

On April 22, 2014 U.S. District Court Judge Owen M. Panner dismissed my action in Case No. 1:14-C-641-PA, without judicial authority. Judge Panner's oath of office was constitutionally deficient because the statutorily prescribed oath of office set out at 1 Stat. 73. Sec. 8 is not pursuant to the United States Constitution. The Constitution requires that "all executive and judicial Officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution." The oath prescribed by statute requires federal justices and judges to solemnly swear or affirm, that "*I will administer justice without respect to person, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as _____, according to the best of my abilities and "understanding, agreeably" to the Constitution and laws, of the United States. So help me God.*" Understanding agreeably to the Constitution," is not pursuant to "support this Constitution."

"Understanding agreeably" to the Constitution is not a delegated power to the United States by the Constitution

The 10th Amendment states; *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

Judge Panner, by "understanding agreeably" to the Constitution and laws, of the United States, is denying me of my constitutional reserve power of understanding agreeably to the Constitution and laws of the United States, pursuant the 10th Amendment.

Claim II

On April 22, 2014 U.S. District Court Judge Owen M. Panner dismissed my action in Case No. 1:14-C-641-PA, which was a US Constitutional issue, which I believed I was going to bring before a jury, as I demanded in my Complaint. But before dismissing my Complaint for lack of subject matter, Judge Panner found my claim had no merit, and was wholly insubstantial because the slight difference in wording between the Constitution and the statute providing the oath of office, had no legal significance. I contend that federal courts lack this power of judicial review, as above shown, because the Constitution confers upon courts the power only to support the Constitution, not “understanding agreeably” to the Constitution. I contend *Marbury v Madison*, was wrongly decided and this is my reasoning that *Marbury v Madison* should be overruled: The statutory prescribed oath of office set out at 1 Stat. 73. Sec. 8. *“And be it further enacted, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: ‘I, A. B., do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as _____, according to the best of my abilities and ‘understanding, agreeably’ to the Constitution and laws, of the United States. So help me God.’”*

Art.VI, cl. 3 U. S. Constitution states: *“The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to ‘support this Constitution’; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.”*

The Constitutionally prescribed oath of office, set out at 1 Stat. 23. Sec 4 states: *“I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.”*

The 10th Amendment to the Constitution states: *“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”* The power of “understanding, agreeably to the Constitution and laws” of the United States is not delegated to the United States by the Constitution, the power to “support the Constitution of the United States,” is delegated to the United States by the Constitution.

In *Marbury v Madison*, 5 U.S. 137 (1 Cranch 137) (1803) the supreme Court quoted: *“The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as _____, according to the best of my abilities and ‘understanding, agreeably’ to the constitution, and laws, of the United States. Why does a Judge swear to discharge*

his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? If it is closed upon him, and cannot be inspected by him?" This was the argument the supreme court used as it's justification for the power of judicial review in *Marbury v Madison*, 5 U.S. 137 (1 Cranch 137) (1803)

The quote: *"The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject."* Any oath of office imposed by the legislature that does not say "support the Constitution of the United States," is constitutionally deficient and is void.

As prescribed in Article V of the Constitution: *"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth Section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."*

Thus, it takes an Amendment to the United States Constitution to delegate the power of "understanding , agreeably" to the Constitution and laws of the United States, not an oath or affirmation, of office imposed by the legislature. The power of "understanding, agreeably" to the Constitution and laws of the United States, is not a power delegated to the United States federal courts by the Constitution.

Thus, *Marbury v Madison*, and the power of judicial review it created, was wrongly decided and must be overruled. The power of understanding, agreeably to the Constitution and laws," of the United States is a power reserved to the people.

Judge Panner, by "understanding agreeably," to the Constitution and laws of the United States, is denying me of my constitutional reserve power of "understanding agreeably" to the Constitution and laws of the United States pursuant to the 10th Amendment.

IV. RELIEF

I demand, Judge Panner, take the Constitutionally prescribed oath or affirmation of office, set out at 1 Stat. 23. Sec 4 which states: "*I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.*" Only. And upon Judge Panner's Oath or Affirmation, to "support the Constitution" of the United States, cease and desist the constitutional deficient power of "understanding, agreeably to the Constitution and laws," of the United States through judicial review.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 2nd day of May, 2014


Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on 5-2-2014, I made service of the following document:
(date)

Complaint
(document title)

by placing a copy in a first-class postage paid envelope in Crescent, OR for
(city)
delivery by U.S. mail to the address(es) set forth below:

United States of America
(name)

Counsel for: United States Attorney Office
(name of party)

District of Oregon
(mailing address)

310 West Sixth
Medford, OR.
97501

Kenneth W. Medenbach
Kenneth W. Medenbach
(signature)
135887 MAIN ST, PO Box 333
(name)
Crescent, OR.
(address) 97733

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2014, I made service of the following document:

Complaint
(document title)

by placing a copy in a first-class postage paid envelope in Crescent, OR. for
(city)
delivery by U.S. mail to the address(es) set forth below:

United States of America
(name)

Counsel for: U.S. Attorney General
(name of party)

United States Department of Justice
(mailing address)

950 Pennsylvania Ave
Washington, DC
20530

Kenneth W. Medenbach
(signature)

Kenneth W. Medenbach
(name)

135887 Main St, PO Box 333
(address)

Crescent, OR 97733